in order to fabricate evidence to bolster his defence that the bank had notice that the goods covered by the bills like the 2 bills in issue here were sent on consignment basis from the drawers to the defendants.

It was also submitted by the defence counsel that having regard to improper or illegal arrangement between the drawers and the defendants concerning the issue and acceptance of these Bills under the provisions of section 30(2) of the Bills of Exchange Act the onus was on the plaintiffs to prove that they had given value in good faith for the 2 Bills in question. I took the view that the provisions of section 30(2) of the Bills of Exchange Act did not apply to the plaintiffs here as they are the original payee holders of the 2 Bills here following the decision in *Talbot* v. *Von Boris.*[1] Even if I am wrong on this point I found that on the evidence before me the plaintiffs had shown that they had given value in good faith for these 2 Bills in issue here.

First there is the evidence of Mr. Pereira that these 2 bills had the rubber stamp chop containing the prefix code letters "FBPRW" against their serial numbers indicating that the Bombay Branch had purchased these 2 bills from the drawers and would have credited the drawers' account with the money. Secondly there is the letter AB111 from the drawers to the defendants dated December 11, 1972 coupled with the evidence of Mr. Khemani regarding the circumstances under which the drawers wrote this letter and handed it to him in Bombay which quite clearly showed that there was an admission by the drawers that they had discounted these 2 bills with the plaintiff bank. Besides the evidence before me also showed that the plaintiffs were an innocent party in all these transactions and during the material times they were unaware and had no knowledge of the private arrangements between the drawers and the defendants. On the evidence before me I found as a fact that the plaintiff bank had given value in good faith for both these bills.

Accordingly I gave judgment for the plaintiffs as claimed with costs.

Judgment for the plaintiff.

Solicitors: *Drew & Napier; J. B. Jeyaretnam & Co.*

MALAYSIAN REPORTS

KASIVISVANATHAN CHETTIAR v. PEREIRA

[F.C. (Suffian L.P., Lee Hun Hoe C.J. (Borneo) and Wan Suleiman F.J.) February 21, 1976]

[Kuala Lumpur — Federal Court Civil Appeal No. 135 of 1975]

Land Law — Caveat — Application for removal of private caveat — Caveator claiming he has bought land — Suit instituted by caveator against registered owner — No onus on caveator to prove he has a registrable interest in land — Need to preserve status quo — National Land Code, s. 327.

The respondent was in possession of a piece of land. The appellant the registered owner of the land wanted him to get out. The respondent claimed that he had bought the land and that he was permitted to build the house on it. The appellant on the other hand said that he was only a tenant. The respondent had lodged a caveat against the land and instituted proceedings against the appellant relating to the land. The appellant applied to have the caveat removed and his application was refused in the High Court. He appealed to the Federal Court.

Held, dismissing the appeal: (1) there was a real dispute between the parties regarding the land. The respondent had filed a suit against the appellant and it was desirable that the *status quo* be preserved pending the disposal of the suit;

(2) where the caveator has filed a suit against the caveatee to vindicate his claim he does not have to prove he has a good claim to a registrable interest in the land when the caveatee applies to have the caveat removed, but only when the suit comes to trial.

Case referred to:-

(1) *Nanyang Development (1966) Sdn. Bhd.* v. *How Swee Poh* [1970] 1 M.L.J. 145.

FEDERAL COURT.

R. Tan for the appellant.

S. Periasamy for the respondent.

Suffian L.P. (delivering the judgment of the Court, read by Wan Suleiman F.J.): We dismissed this appeal and promised to give our reasons which we now do.

The land concerned is best described by reference to the premises on it known as No. 11 and 11-1, Jalan Kasipillai, Sentul, Kuala Lumpur.

The premises are a semi-permanent house, part brick and part timber, built by the respondent. The house was also occupied by the respondent.

The respondent lodged a caveat against the land.

The appellant, its registered owner, applied to the court to have the caveat removed.

The court refused to order the caveat removed.

The appellant appealed to us.

The principal reason why we dismissed this appeal is that there is a real dispute between the parties regarding this land; that to resolve this real dispute the respondent had filed a suit against the appellant; and that it is desirable that the *status quo* be preserved pending the disposal of that suit, so that the appellant cannot deal with the land until then. The dispute is this. The respondent is in possession. The appellant wants to get him out. The respondent says that he has bought the land and he was permitted to build the house on it. The appellant says that the respondent is only a tenant.

We said that we would give our reasons, mainly because of the difficulty caused by our decision in *Nanyang Development (1966) Sdn. Bhd.* v. *How Swee Poh.*[1] There we said that where a caveatee applies under section 327 of the National Land Code to the court for an order that a caveat on his land be removed it is up to the caveator to satisfy the court that he has good reasons for his alleged claim that he has a registrable interest in the land. But that case is different from this one. There the caveatee entered into an agreement to sell the land in question to A, who subsequently assigned her rights to B and the caveator came into the picture and caveated the land because he had a contract with C. There was no evidence showing that the caveator had any contract with the caveatee, nor with A, nor with B, and there was no evidence showing the connection between B and C. Here, on the other hand, there is a positive assertion that the appellant has agreed to sell the land to the respondent.

Secondly, in *Nanyang* at the material time the caveator had not filed nor undertaken to file a suit against the caveatee as defendant relating to the land. Here, on the other hand, there was and is a suit pending between caveator as plaintiff and caveatee as defendant relating to the disputed land.

The caveatee here is the registered proprietor. Ultimately it is up to the caveator to prove that he has good reasons for his alleged claim that he has a registrable interest in the land, but where he has filed a suit to vindicate his claim he does not have to prove he has a good claim when the caveatee applies to have the caveat removed, but only when the suit itself comes to trial.

Appeal dismissed.

Solicitors: *Allen & Gledhill; Nahappan, Muthu & Peri.*

ISHAH BINTE AHMAD v. POH KIM DOI

[F.C. (Suffian L.P., Ali and Wan Suleiman F.JJ.) May 19, 1976]

[Alor Star — Federal Court Civil Appeal No. 166 of 1975]

Moneylenders — Loan of money — Memorandum of contract — Promissory note executed by way of security — Whether copy given to borrower need to be authenticated — Moneylenders Ordinance, 1951, ss. 16 and 27.

The respondent a licensed moneylender had brought an action for the recovery of the loan given to the appellant. A memorandum of the contract of loan had been signed by the respondent and thumbprinted by the appellant and at the same time the appellant executed a promissory note by way of security. A copy of the promissory note was given to the appellant but was not authenticated and it was contended by the appellant that as the copy was not authenticated, the loan was unenforceable. The learned trial judge held that the copy was not authenticated nor was the memorandum but he nevertheless held that the loan was enforceable. He therefore allowed the claim of the respondent. The appellant appealed to the Federal Court.

Held, dismissing the appeal: as there is no legal requirement in the Moneylenders Ordinance that the copy of the promissory note supplied by the lender to the borrower should be authenticated there was no merit in the appellant's contention in this case.

Case referred to:-

(1) *Karuppiah* v. *Kehar Singh* [1965] 2 M.L.J. 58.

The following authorities were also cited in argument: *Nanyang Development (1966) Sdn. Bhd.* v. *How Swee Poh* [1970] 1 M.L.J. 145; *Selvaduray* v. *Chinniah* [1939] M.L.J. 254; *Lim Soh Meng* v. *Krishnan* [1967] 1 M.L.J. 8; *Ooi Ai Seng* v. *Chan Lin Lam* [1973] 2 M.L.J. 20; *Inter-continental Mining Sdn. Bhd.* v. *Societe des Etains de Bayas Tudjuh* [1974] 1 M.L.J. 145, 148 A to C; *Nasri* v. *Mesah* [1971] 1 M.L.J. 32.

FEDERAL COURT.

S. Visvanathan for the appellant.

Oo Gin Son for the respondent.

Suffian L.P. (delivering the judgment of the Court): The plaintiff (respondent before us) is a licensed moneylender. He lent money to the defendant (appellant before us).

That was on January 11, 1969. On that day both parties went to a solicitor, Mr. Christie. Before Mr. Christie the lender signed and the borrower thumbprinted a memorandum required by section 16 of the Moneylenders Ordinance, 1951. The copy produced by the plaintiff is Exhibit P1A at page 34 of the record.

At the same time the borrower executed a promissory note by way of security.

According to the notes of the trial and to the written submission of the parties included in the appeal record, the contention of the borrower is a very narrow one. It is this. Two copies of the promissory note were executed. The plaintiff retained one copy (Exhibit P1 as at page 33) and gave the other copy (Exhibit D2 as at page 35) to the borrower. It is contended on behalf of the borrower that the *copy* given to him should have been authenticated by the lender, that it was not so authenticated and therefore the loan was not enforceable.

The learned judge held that the copy was not authenticated nor was the memorandum (Exhibit P1A at page 34), but nevertheless on the authority of *Karuppiah* v. *Kehar Singh*[1] the loan was enforceable. He therefore allowed the claim.

The borrower appealed to us.

During the course of arguments reference was made to sections 16 and 27 of the Ordinance and it would be convenient to reproduce them now.

Section 16 in so far as relevant provides:

"(1) No contract for the repayment by a borrower of money lent to him by a moneylender and no security given by the borrower in respect of such contract shall be enforceable unless a note or memorandum in writing of the contract be signed by the parties to the contract, and unless a copy thereof authenticated by the lender be delivered to the borrower before the money is lent, and no such contract or security shall be enforceable if it is proved that the note or memorandum aforesaid was not signed before the money was lent or before the security was given, as the case may be."

Subsection (3) prescribes what must be contained in the note or memorandum.

Section 27 in so far as relevant provides:

"(1) Whenever a promissory note is taken as security for any loan and the borrower is a person not understanding the written language on such note [as is the case here] the note shall be attested by an Advocate and Solicitor. The attestor